

**Passenger Vessel
Association**

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July 3, 2008

Ms. Mary D. Nichols
Chairwoman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed Harbor Craft Regulations

Chairwoman Nichols and Members of the Board:

The Passenger Vessel Association (PVA) – the national trade association representing owners and operators of U.S.-flagged passenger vessels of all types – respectfully submits these comments to the California Air Resources Board (CARB) regarding the recently released proposed modifications to harborcraft air emission regulations for a 15-day public review and comment.

PVA represents the interests of owners and operators of dinner cruise vessels, sightseeing and excursion vessels, passenger and vehicular ferries, private charter vessels, whalewatching and eco-tour operators, windjammers, gaming vessels, amphibious vessels, water taxis, and overnight cruise ships. PVA has been in operation for 37 years. Nationwide, it currently has nearly 600 vessel and associate members. Its vessel-operating members range from small family businesses with a single boat to companies with several large vessels in different locations to governmental agencies operating ferries.

PVA has 33 members that regularly operate approximately 100 vessels in California. Nearly all of the ferry operators in state are members of PVA.

Proposed Modification for the Definitions of “Ferry” and “Excursion Vessel”

PVA supports the approach embraced by the proposed modifications. The proposed definition of “ferry” does not use the pre-existing statutory definition found in section 2101 of title 46 of the *United States Code*, but the formulation proposed by the CARB staff provides a sufficiently clear characterization of a ferry. Similarly, the proposed definition of “excursion vessel” should prove workable in practice; it is good that it contains an explicit statement that the term “excursion vessel” does not include a ferry vessel.

Proposed Compliance Extensions for Certain Owners with Multiple Vessels

Responding to comments previously submitted, the CARB staff added a compliance extension for owners with multiple existing vessels who would otherwise need to comply in the first two compliance years (2009 and 2010). Thank you for this proposed modification. PVA assumes that most owners of existing vessels will comply by installing new, lower-emission engines on their vessels. PVA believes that certain vessel

owners provided information to CARB demonstrating that the proposed compliance schedule would mean that they would be required to install a significant number of engines at once in the first two years. Private operators simply do not have or have access to that type of capital. The capital costs need to be spread out more evenly.

The proposed modifications to section 2299.5(e)(6)(E)4 and section 93118.5(e)(6)(E)4 respond to this need to “spread out” the capital costs for “Multiple Engines on Multiple Vessels within Same Fleet and With Same Compliance Dates.” First, a covered vessel owner with compliance dates of 2009 or 2010 will be given the opportunity to seek a one-time extension to as late as December 31, 2013, upon approval of the revised compliance schedule by the Executive Officer of CARB. PVA supports this proposed modification, as it addresses the challenging situation in which one or more PVA members find themselves, namely the need to replace multiple engines in multiple vessels in 2009 and 2010.

Also, the proposed modification provides somewhat more flexibility for a covered owner with multiple engines on two or more vessels with a compliance date of 2011 or later. Such an owner can seek a one-time extension of one year, upon approval by the CARB Executive Officer. PVA proposes that CARB reconsider this part of the proposed modification and restructure it to be equivalent to the potential relief afforded to covered owners with compliance dates of 2009-2010. PVA believes that there are a small number of vessel operators with multiple vessels and engines to be replaced in given years in 2011 and beyond; PVA has asked those owners to identify themselves and characterize their fleets in their submissions pursuant to this 15-day review and comment. The capital and financial challenges facing them will be the same as those facing owners with compliance years of 2009-2010. The proposed rule should be modified to allow the CARB Executive Officer to approve a compliance extension plan that embraces as much as four years (not just a single year) beyond the original compliance date. Keep in mind that such a revision would not mandate an extension; however, it does hold out the opportunity for such a flexible extension, assuming that the CARB Executive Officer is satisfied with the proposed compliance plan. Retaining the possibility of such flexibility in the final plan leaves the ultimate authority with CARB but gives the owner with multiple vessels and multiple vessels with a compliance year of 2011 or beyond the chance to propose an acceptable method of “spreading out” the heavy capital costs.

Finally, there is a verb omitted at the bottom of page A-41 where the current text reads, “Upon written request, the E.O. grant to the person...”

Proposed Modification to Initial and Compliance Plan Reporting Requirements

Covered owners of in-use harborcraft vessels must submit a report as to how they intend to comply. The proposed modification sets the due date for this report as February 28 of the year compliance is required. CARB needs to further clarify this reporting requirement for owners of multiple vessels with different compliance years. Is such an owner to submit a single report addressing the compliance plan for the entire fleet as of February 28 of the year of compliance for the first vessel? Or does that report cover only the vessel or vessels with a compliance date of that year, with subsequent reports required

in later years when additional vessels must comply? PVA acknowledges that the compliance plan is “informational” in nature and not binding on either the CARB Executive Officer or the owner.

Proposed Modification to Compliance Schedules and Determination of Engine Model Year

The proposed modification would restrict the use of the “engine model year plus five years” method to vessels with home ports outside of the South Coast Air Quality Management District. The “engine model year plus five years” methodology will enable a vessel owner to obtain more time to use a current engine while at the same time achieving reduced engine emissions. This is an important option in the proposed regulation. It is to be regretted that this methodology will not be allowed for vessels in the South Coast. Retention of this concept for vessels in the South Coast would not impede that region’s efforts to achieve its air quality goals, but it would demonstrate CARB’s sensitivity to the fact that the affected passenger vessel operators in the South Coast area are all private small businesses with limited financial resources. Some of these operators have already demonstrated their financial commitment to clean air by obtaining Carl Moyer funds and combining them with their own private resources to repower their vessels with lower-emissions engines in recent years before they had any legal obligation to do so. Now they find that they will be deprived of the full economic lives of these cleaner engines, particularly because of the removal of the “engine model year plus five” option. PVA urges CARB to reconsider this proposed modification and restore the “engine model year plus five years” option statewide. An alternative would be to restore this “engine model year plus five years” option for any engine in the South Coast area that was obtained with the assistance of Carl Moyer grant funding.

Additional Comments

PVA acknowledges that the 15-day review comment period is designed to solicit comments on the proposed modifications, not the original regulation. Nonetheless, PVA wishes to submit the following important observations:

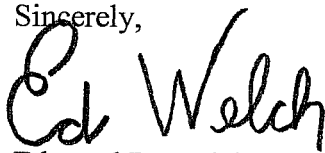
- The proposed rule properly aligns itself with the nationwide regulatory regime for new marine engines developed by the U.S. Environmental Protection Agency. It is appropriate for the CARB harborcraft rule to require new vessels and engines to comply with Tier 3 requirements at the same time the EPA Tier 3 mandates go into effect.
- It would be a mistake for the CARB harborcraft rule to mandate specific types of aftertreatment systems by dates certain, and the CARB proposal properly avoids such an approach. CARB is aware of the utter failure of the aftertreatment system installed in the San Francisco Bay high-speed ferry *Solano*.
- With the sad experience of the *Solano* in mind, it would be better for the rule to embrace the concept of “Best Available *Proven* Control Technology” as a requirement for certain new ferries. As shown with the *Solano* aftertreatment fiasco, there are technologies touted as “available” that are in fact unproven in the marine environment and that turn out to be disastrous in real life. The various on-land technologies mentioned by some

manufacturers of aftertreatment systems may or may not prove themselves to work in a marine context on the smaller ferries and passenger vessels typical in California, but as of yet, nobody knows. *Proven* would mean “demonstrated to be effective in an operational context in the marine environment on a vessel of the size and type subject to the harborcraft regulation.” If CARB chooses not to amend the term “best available control technology,” its Executive Officer must be exceedingly cautious in imposing such requirements on new ferries, especially as CARB seems to have no financial responsibility in the event an imposed technology fails in actual operations.

- The use of 300 hours as the threshold for the low-use vessel exemption should be reassessed. In particular, there should be an option of looking at a vessel’s use history over a period of several years and then employing the average figure, instead of simply using the operational history of a single prior year. As the economy waxes and wanes, a vessel’s use per year may go up or down. A single year may not provide a true snapshot of the vessel’s typical operational usage. Also, 300 hours is the equivalent of only five months of operation with a single two-hour cruise per day. To PVA’s knowledge, CARB has never explained where the 300-hour threshold came from. A somewhat higher threshold could be inserted with extremely minimal consequences for air emissions.

The Passenger Vessel Association appreciates this and previous opportunities to participate in the CARB harborcraft rulemaking process. Please let us know if you have any questions or if you need additional information about these comments.

Sincerely,

A handwritten signature in black ink that reads "Ed Welch". The signature is written in a cursive, flowing style.

Edmund B. Welch
Legislative Director